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Attorneys for Plaintiff, MICHAEL GIDDENS

and STEPHANIE GIDDENS

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF VENTURA

**MICHAEL GIDDENS and STEPHANIE
GIDDENS,**

Plaintiff,

vs.

**TILLY'S MARINE, INC.; BRUNSWICK
CORPORATION; FIFTH THIRD BANK,
N.A.; and DOES 1 through 100, Inclusive,**

Defendants.

Case No.:

PLAINTIFF'S COMPLAINT FOR:

1. Violation of Song-Beverly Consumer
Warranty Act, Civ.C § 1790 *et seq.*

**JURY TRIAL DEMANDED
UNLIMITED JURISDICTION**

By FAX

MICHAEL GIDDENS and STEPHANIE GIDDENS ("Plaintiff") allege:

GENERAL ALLEGATIONS

1. This matter involves the sale of a defective new boat which the responsible parties have been unable to repair under warranty. The consumer "lemon laws" apply to this type of transaction. Dealer which sold the boat is TILLY'S MARINE, INC. Manufacturer which manufactured and/or distributed the vehicle is BRUNSWICK CORPORATION a Delaware corporation registered with the California Secretary of State to conduct business in California. Lender which financed Plaintiff's acquisition, took assignment of the subject acquisition

1 agreement, and is liable per the FTC Holder Rule, is **FIFTH THIRD BANK, N.A. dba MB**
2 **FINANCIAL BANK.**

3 2. Venue is proper because Dealer is principally located at 935 E. Front Street; Ventura,
4 California 93001.

5 3. Plaintiff does not know the true names and capacities, whether corporate, partnership,
6 associate, individual, or otherwise, of defendants sued herein as Does 1 through 100, inclusive,
7 and thus names them under the provisions of California Code of Civil Procedure § 474. Does 1
8 through 100, inclusive, are in some manner responsible for the acts, occurrences, and transactions
9 set forth herein, and are liable to Plaintiff. Plaintiff will set forth the true names and capacities of
10 the fictitiously named defendants together with appropriate charging allegations when ascertained.
11 All acts of corporate employees/agents as alleged below were authorized or ratified by an officer,
12 director, or managing agent of the corporate employer/principal.

13 4. Plaintiff rightfully rejects and/or justifiably revokes acceptance of the subject boat and
14 exercises Plaintiff's right to cancel the subject transaction. Manufacturer and Dealer have failed
15 to repurchase or replace the Boat, and that failure is "willful" as such term is defined within the
16 applicable statutes herein.

17 5. On November 17, 2018, Plaintiff purchased from Dealer a new 2018 Harris Cruiser 220
18 boat built by Manufacturer bearing Serial # HAMP3732818 ("Boat"). As reflected in the purchase
19 contract, the price before finance charges was \$45,082.26.

20 6. The Boat was sold with an express warranty from the Manufacturer, for which Dealer was
21 an authorized retailer and distributor in California. The express warranty covered most
22 components of the Boat for five years, including the defective components identified herein.

23 7. Because the Boat was sold with an express warranty, the Boat was also sold with a statutory
24 implied warranty of merchantability for which both Dealer and Manufacturer are liable, as
25 described within The Song-Beverly Consumer Warranty Act at Civil Code Section 1792. The
26 implied warranty of liability promises a California consumer of retail goods for personal or
27 household use that the goods are in safe condition and substantially free of defects and that the
28 goods are fit for the ordinary purposes for which such goods are to be utilized.

1 8. Unfortunately, the Boat was sold with a defect which Dealer and Manufacturer have not
2 been able to resolve despite multiple warranty repair presentations. The Boat was advertised to
3 Plaintiff as being able to cruise at speeds in excess of 35 mph and, in fact, performed as advertised
4 at the beginning of Plaintiff's ownership. Yet, the Boat is unable to cruise at speeds of more than
5 approximately 2/3rd of that. Plaintiff presented the Boat to Dealer in August 2019 for inspection
6 and diagnosis of the Boat's lack of speed. Dealer asserted that the Boat was operating normally;
7 yet, Plaintiff continued to observe unacceptably low speed. Plaintiff presented the Boat to Dealer
8 again in June 2020 and again in August 2020 in an attempt to obtain warranty repairs to restore
9 the Boat's speed. Those times, Dealer acknowledged but was unable to correct the power loss
10 issue. Dealer even replaced propulsion parts in an effort to resolve the lack of speed. Yet, the
11 Boat continued to malfunction in the same way. The power-loss malfunction is apparently
12 unrepairable.

13 **FIRST CAUSE OF ACTION**

14 Violation of Song-Beverly Consumer Warranty Act,

15 Civil Code Sections 1790 et seq.

16 (Against Dealer, Manufacturer, Lender and Does 1 to 100)

17
18 9. Plaintiff incorporates by reference each and every allegation set forth in the preceding
19 paragraphs of this Complaint.

20 10. Pursuant to the Song-Beverly Consumer Warranty Act at Civil Code § 1790, *et seq.*, the
21 Boat constitutes "consumer goods" purchased or leased primarily for family or household
22 purposes.

23 11. At the time of sale or lease, the defendants were in the business of selling Boats to retail
24 buyers. However, at the time of sale, the Boat suffered from significant defects and non-
25 conformities which later were not repaired under warranty despite repeated presentations, which
26 have rendered the Boat unmerchantable.

1 12. Plaintiff files this action within four years of Plaintiff's inability to obtain repairs under the
2 express warranty and within four years of Plaintiff's discovery that the Boat was unmerchantable
3 at time of sale.

4 13. Plaintiff elects and demands from Manufacturer restitution of all monies paid for the Boat
5 (downpayment, monthly payments, finance charges, taxes, registration, and other incidental and
6 consequential expenses), plus reimbursement, plus additional forms of recovery permitted by
7 Commercial Code Sections 2711, 2712 and 2713, including inspection and transportation costs,
8 plus civil penalties, attorney's fees and other litigation costs, pursuant to Civil Code Sections
9 1793.2(d) and Section 1794 for express-warranty violations.

10 14. Plaintiff also elects and demands from Dealer and Manufacturer jointly reimbursement of
11 the purchase price and rescission of the purchase or lease agreement plus the recovery permitted
12 by Commercial Code Sections 2711, 2712 and 2713, including inspection and transportation costs,
13 plus attorney's fees and other litigation costs, pursuant to Civil Code Section 1794(b) for implied-
14 warranty violations.

15 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 16 1. For actual, incidental and consequential damages and restitution from all Defendants, and
17 then as against Manufacturer only, civil penalties;
18 2. For rescission and other appropriate injunctive relief;
19 3. For pre-judgment interest at the maximum legal rate;
20 4. For reasonable and statutory attorney's fees and other costs of suit;
21 5. Any other relief as the Court deems just and proper.

22
23
24 Dated: October 9, 2020

LAW OFFICES OF ROBERT B. MOBASSERI, PC

25
26 By: 

David Alan Cooper
Attorneys for Plaintiff, MICHAEL GIDDENS and
STEPHANIE GIDDENS